

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ELIZABETH COATES, an individual,  
KELLY HICKMAN, an individual,  
ELAINA SIGAFOOSE, an individual,  
DARLENE ANDERSON, an individual,  
STEPHANIE BRENDEN, an individual,

No. 3:23-cv-00931-JR

ORDER

Plaintiffs,

v.

LEGACY HEALTH, a corporation,

Defendant.

HERNÁNDEZ, District Judge:

Magistrate Judge Jolie A. Russo issued a Findings and Recommendation on January 8, 2024, in which she recommends that this Court grant Defendant's Motion to Dismiss as to the claims of Plaintiffs Kelly Hickman, Elaina Sigafoose, and Stephanie Brendan;<sup>1</sup> dismiss those claims without prejudice; and grant Plaintiffs leave to file a motion to amend the Complaint.

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<sup>1</sup> Defendant withdrew its Motion to Dismiss as to the claims of Plaintiffs Elizabeth Coates and Darlene Anderson.

F&R, ECF 14. The matter is now before the Court pursuant to [28 U.S.C. § 636\(b\)\(1\)\(B\)](#) and [Federal Rule of Civil Procedure 72\(b\)](#).

Plaintiffs filed timely objections to the Magistrate Judge’s Findings and Recommendation. Pls. Obj., ECF 16. When any party objects to any portion of the Magistrate Judge’s Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge’s report. [28 U.S.C. § 636\(b\)\(1\)](#); [Dawson v. Marshall](#), 561 F.3d 930, 932 (9th Cir. 2009); [United States v. Reyna-Tapia](#), 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*).

In their Objections Plaintiffs raised several new arguments not previously presented to Judge Russo. It is within a district court's discretion whether to accept new argument or evidence submitted with objections. *See Jones v. Blanas*, 393 F.3d 918, 935 (9th Cir. 2004)(discussing the district court's discretion to consider new arguments raised in objections); [Brown v. Roe](#), 279 F.3d 742, 746 (9th Cir. 2002)(rejecting the Fourth Circuit's requirement that a district court must consider new arguments raised in objections to a magistrate judge's findings and recommendation); [United States v. Howell](#), 231 F.3d 615, 621 (9th Cir. 2000)(discussing the circuit split on whether a district court must or may consider new evidence when reviewing *de novo* a magistrate judge's findings and recommendation, and concluding that a district court “has discretion, but is not required” to consider new evidence); [Hosp. Management Inc. v. Preferred Contractors Ins. Co.](#), No. 3:18-cv-00452-YY, 2021 WL 2813610, at \*1 (D. Or. July 6, 2021)(declining to consider arguments not presented to the magistrate judge). In the exercise of its discretion the Court declines to consider new arguments not previously presented to Judge Russo, both to promote systemic efficiency and prevent “sandbagging.” *See Howell*, 231 F.3d at 621-22. The Court has carefully considered Plaintiffs’ objections to arguments presented to

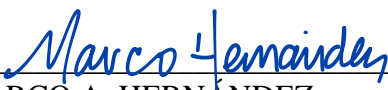
Judge Russo and concludes that there is no basis to modify the Findings and Recommendation. The Court has also reviewed the pertinent portions of the record *de novo* and finds no error in the Magistrate Judge's Findings and Recommendation.

### CONCLUSION

The Court ADOPTS Magistrate Judge Russo's Findings and Recommendation, ECF 14. Accordingly, the Court GRANTS Defendant's Motion to Dismiss, ECF 6, as to the claims of Hickman, Sigafoose, and Brenden and dismisses those claims without prejudice. Plaintiffs may file a motion to amend the Complaint no later than 30 days from the date of this Order.

IT IS SO ORDERED.

DATED: March 19, 2024.

  
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MARCO A. HERNANDEZ  
United States District Judge